

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
MOLL INDUSTRIES, INC., *et al.*,¹) Case No. 10-11371 (MFW)
) Jointly Administered
)
Debtors.) **Related Docket Nos. 181, 279, 303 and 462**

**AGREED ORDER WITH RESPECT TO CLAIMS
ASSERTED BY TM ACCEPTANCE CORPORATION**

Upon consideration of the *Notice of Debtor's Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts* (the "Notice") [Docket No. 181], the *Limited Objection of TM Acceptance Corp. to Notice of Debtor's Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts* (the "Limited Objection") [Docket No. 279], *Debtors' Response to Limited Objection of TM Acceptance Corp. to Notice of Debtor's Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts* (the "Response") [Docket No. 303], and *TM Acceptance Corp.'s Motion for Leave to File Instantly its Reply in Response to Debtors' Response to Limited Objection of TM Acceptance Corp. to Notice of Debtor's Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts* (the "Reply") [Docket No. 462]; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. §157; and adequate notice having been given; and after due deliberation and sufficient cause therefore:

¹ The Debtors in these cases are as follows: Moll Industries, Inc., Case No. 10-11371 (MFW); Moll Holdings, Inc., Case No. 10-11372 (MFW); Moll Europe Holdings, LLC, Case No. 10-11373 (MFW); and Moll Latin America Holdings, LLC, Case No. 10-11374 (MFW).

THE COURT HEREBY FINDS THAT:

- A. On or about July 8, 2003, TM Acceptance Corp. (“TMA”) and debtor Moll Industries, Inc. (“Moll”) entered into Equipment Lease 3187 (“Lease 1”) pursuant to which TMA agreed to lease to Moll a model ISGS310V21-19AT Toshiba Plastic Injection Molding Machine (“Press 310T”).
- B. On or about July 9, 2003, TMA and Moll entered into Equipment Lease 3188 (“Lease 2”) pursuant to which TMA agreed to lease to Moll a model EC240V21-8A Toshiba Plastic Injection Molding Machine (“Press 240T”).
- C. On or about April 13, 2009, TMA and Moll entered into Equipment Lease 3477 (“Lease 3”)² pursuant to which TMA agreed to lease to Moll a model EC390NIIWV30-17B Toshiba Plastic Injection Molding Machine (“Press 390T”).³
- D. On June 11, 2010, the Debtors filed with the Bankruptcy Court the *Debtors Motion for an Order (a) Approving the Sale of Substantially all of the Debtors Assets, (b) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (c) Granting Certain Related Relief* (the “Sale Motion”) [Docket No. 137].
- E. In connection with the Sale Motion, on June 25, 2010, the Debtors filed the Notice. Schedule 1 to the Notice lists three leases with TMA for Toshiba Molding Presses with a collective proposed cure amount of \$115,385.00 (the “Proposed Cure Amount”).

² Lease 1, Lease 2 and Lease 3 shall sometimes be referred to individually as a “Lease” and collectively as the “Leases.”

³ Press 310T, Press 240T and Press 390T shall be referred to collectively as the “Equipment”.

F. On August 23, 2010, TMA filed the Limited Objection objecting to the Proposed Cure Amount and asserting a cure amount of \$244,940.15 plus attorneys' fees in the amount of \$2,900.00 (the "Asserted Cure Amount").⁴

G. The Debtors filed the Response on September 2, 2010 asserting, among other things that the Leases are not true leases but, instead, are secured financing agreements.

H. On September 16, 2010, the Court entered an order (the "Sale Order") [Docket No. 324] authorizing the Debtors to sell substantially all of their machinery and equipment including the Equipment, to Branford Auctions, LLC ("Branford") free and clear of all liens, claims and encumbrances. The Sale Order included agreed upon provisions that allowed the closing of the sale to Branford, including the sale of the Equipment, while preserving TMA's rights with respect to the Leases, the Equipment and the Asserted Cure Amount. These provisions included a \$250,000.00 reserve from the proceeds of the sale in favor of TMA.

I. An evidentiary hearing with respect to the issues raised in the Notice, the Limited Objection, the Response and the Reply was scheduled for January 12, 2011 (the "Hearing"). Prior to the Hearing the parties reached an agreed resolution of all issues related to the Leases, the Equipment and the Asserted Cure Amount.

NOW, THEREFORE, IT IS HEREBY AGREED, ORDERED, ADJUDGED, AND DECREED THAT:

1. Except as otherwise provided in paragraph 2 hereof, in full and complete satisfaction of (i) any and all claims that TMA has or may have against the Debtors and (ii) any and all claims that the Debtors have or may have against TMA with respect to the Leases, the Equipment and/or the Asserted Cure Amount, TMA shall receive the following:

⁴ TMA asserts that the amounts necessary to cure all defaults under the Leases now exceeds \$300,000.

- (a) the Debtors shall pay to TMA the sum of \$215,000.00 within seven (7) days of the entry of this Order via wire transfer per the following wire instructions:

Advantage National Bank/Elk Grove Village, IL
Phone No.: 847-364-0100
Routing No.: 071926197
Account No.: 0016000002/TM Acceptance Corp.

- (b) TMA shall be and hereby is granted an allowed general unsecured claim against Moll in the amount of \$85,000.00. To effectuate the foregoing, Claim number 80 ("Claim No. 80") filed by TMA against Moll shall be and hereby is deemed amended such that Claim 80 is and shall be an allowed general unsecured claim against Moll in the amount of \$85,000.00

2. Notwithstanding paragraph 1 above, (i) the Debtors are not releasing any claims that they may have against TMA pursuant to 11 U.S.C. §§ 544, 547, 548, 549 or 550 ("Avoidance Claims") and (ii) TMA may assert any claims it may have against the Debtors as defenses or for defensive purposes to any Avoidance Claims which may be asserted by the Debtors against TMA.

3. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order.

Dated: January 18, 2011
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE